

S.R.JOSHI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 15703 OF 2023

PepsiCo India Holdings Pvt. Ltd.,

... Petitioner

Versus

The Additional Commissioner, CGST &
Central Excise, Pune-I & Others

... Respondents

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Mr. Rohan Shah with Mr. Manish Mishra, Ms. Shareen Gupta, Mr. Srisabari Rajan, Mr. Tanay Vyas & Mr. Mohammed Anajwalla i/b. J.Sagar & Associates, for the Petitioner.

Mr. Jitendra B. Mishra with Mr. Ram Ochani, for the Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 26th MARCH, 2024

ORAL JUDGEMENT (per G.S. KULKARNI, J.):-

RULE. Rule made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2 This Petition, under Article 226 of the Constitution of India, prays for diverse reliefs in the context of challenge to the show cause notice dated 22nd September, 2023 issued by Respondent No.1. The original substantive reliefs as prayed for read thus:-

“(a) that this Hon’ble Court be pleased to declare that the Impugned SCN dated 22.09.2023 is ultra vires the provisions of

- (i) Section 61 (1) of the CGST Act;
- (ii) Section 61 of the CGST Act, read with Rule 99 of the CGST Rules;
- (iii) ultra vires Section 73 of the CGST Act.

(b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India, calling for the records pertaining to the Petitioners case and after going into the validity and legality thereof be pleased to quash and set aside the Impugned SCN dated 22.09.2023 issued by the Respondent No.1;

(c) that this Hon'ble Court be pleased to issue a writ of prohibition restraining the Respondents from giving effect to and/or proceeding with adjudication proceedings with regard to the Impugned SCN dated 22.09.2023 issued by the Respondent No.1.”

3 In the context of the challenge as raised by the Petitioner to the show cause notice, the parties were heard by the Co-ordinate Bench of this Court, of which one of us (G. K. Kulkarni, J.) was a member when the following order came to be passed on 1st December, 2023. The relevant paragraphs 3 &5 of the said order read thus:-

“3 Having considered the contentions as urged on behalf of the petitioner, we are of the opinion that it would be appropriate that the petitioner raises its preliminary objections at the ensuing hearing, on the maintainability of the show cause notice. Let such preliminary objection be considered by the adjudicating officer and decided within four weeks of the petitioner's being heard in that regard. All contentions on such issues are expressly kept open.

5 Liberty to both the parties to apply in the event the preliminary objection is decided at an early stage.”

4 Thus, it is clear from the reading of the aforesaid order that the Petitioner had intended to raise preliminary objections, and which were permitted to be raised by this Court, to be considered and adjudicated at the hearing of the show cause notice which was fixed on 5th December, 2023.

5 The Petitioner, in pursuance thereto, on 5th December, 2023 filed its preliminary objections. A copy of which is annexed at Exh. "A" to the Additional Affidavit dated 8th February, 2024 filed on behalf of the Petitioner.

6 Our attention is drawn to paragraph 2 of the preliminary objections wherein the Petitioner has specifically contended that the Petitioner was attending the personal hearing in the context of such preliminary objections which were expected to be considered. Paragraph 2 of the preliminary objections reads thus:-

"2:-At the very outset, it is submitted that the Company is attending the personal hearing today i.e. 05.12.2023 in the subject proceedings, for the limited purpose of placing on record before your goodself, our Preliminary Objections to the Impugned SCN, as per the order dated 01.12.2023 passed by the Hon'ble High Court in Writ Petition (L) No.31279 of 2023. It is submitted that your goodself is required to consider only the Preliminary Objections at this stage (and not to adjudicate the entire Impugned SCN which is challenged before the Hon'ble High Court), and to pass a reasoned order on these Preliminary Objections. A copy of the order dated 01.12.2023 passed by the Hon'ble Bombay High Court is annexed herewith as Annexure -1".

7 The Additional Commissioner heard the Petitioner on the preliminary objections on 5th December, 2023, however, instead of deciding the preliminary objections as observed by this Court, proceeded to decide the show cause notice itself, by an Order-in-Original dated 29th December, 2023.

In such order, the Adjudicating Officer has consciously recorded that what was mandated was adjudication of the Petitioner's preliminary objections, as seen from paragraph 35 of the Order-in-Original.

8 Being confronted with the situation, the Petitioner prayed for amendment of the Petition for incorporating the following additional prayer, for setting aside the Order-in-Original. Prayer clause b-2 reads thus:-

“(b-2):- that pending the hearing and final disposal of this Petition, the Respondents by themselves, their officers, subordinates, servants and agents be restrained from in any manner enforcing or acting upon the order bearing F. No.V/15-77/CGST/P-1/ADJ/Pepsico/23-24 dated 29.12.2023 issued by the Respondent No.1.”

9 Mr. Rohan Shah, the learned Counsel for the Petitioner, in assailing the Order-in-Original, has confined his submissions to the Petitioner's challenge on the ground that the adjudication which has resulted in the Order-in-Original, is not a fair adjudication, inasmuch as what was expected from the adjudicating officer and as observed by this Court in its Order dated 1st December, 2023, passed on this Petition, was that the preliminary issues as raised by the Petitioner, be decided. It is his submission that, the Petitioner ought to have been granted an opportunity to place before the adjudicating officer documents which would be relevant, in the event, the show cause notice itself was to be taken up and decided. It is submitted that, for such reasons, the Order-in-Original dated 29th December, 2023 be set aside and the proceedings be remanded for a *denovo* consideration for a fresh order to be passed, in accordance with law, after granting an opportunity to the Petitioner to place on record before the adjudicating officer, all the relevant material. It is submitted that there are several documents which were intended to be placed on record of the adjudicating officer, which would be required to be taken into consideration in passing appropriate orders.

10 On the other hand, Mr. Mishra, the learned Counsel for the Respondent, has supported the impugned order. However, Mr. Mishra while opposing the contentions as raised by Mr. Shah, fairly, did not dispute as to what was observed by this Court in the Order dated 1st December, 2023, and the plain consequences brought about by the said order, to the effect that what was required to be considered by the adjudicating officer, would be the preliminary objections being raised by the Petitioner, which, in fact, were raised by the Petitioner. Mr. Mishra would not dispute that, even from what has been observed in the order passed by this Court, the only impression which can be gathered is that the adjudicating officer would consider the preliminary objections. Mr. Mishra, however has a peculiar submission to the effect that the law would not provide any discretion to the adjudicating officer to first decide the preliminary objections and, thereafter, take up the show cause notice, however, not disputing that order of this Court, firstly mandated the determination of the preliminary objections. Mr. Mishra also submitted that, in the facts and circumstances of the case, it was found proper by the adjudicating officer that, since several earlier opportunities were granted to the Petitioner, the show cause notice itself be decided, and, accordingly, the adjudicating officer has taken a call to decide the show cause notice, in passing the impugned Order-in-Original.

11 Having heard the learned Counsel for the parties, and having perused the documents and also Order dated 1st December, 2023 passed by this Court, we are of the clear opinion that there is much substance in the contentions as urged on behalf of the Petitioner that the adjudicating officer ought to have granted an opportunity to the Petitioner to raise all contentions in the course of adjudication in the event he intended to decide the Show Cause Notice and not the preliminary objections. In such situation, the Petitioner could not have been taken unaware of the intentions of the

adjudicating officer. There cannot to be any vagueness in the course of quasi judicial adjudication and by taking a party by surprise on what would be actually adjudicated, more particularly, when there was a High Court Order. To undertake a quasi judicial adjudication is a solemn exercise which needs to be fulfilled with fairness and having all attributes of judicial adjudication. We may observe that the Order dated 1st December, 2023 passed by this Court was clear to the effect that, on 5th December, 2023, the Petitioner would raise before the adjudicating officer its preliminary objections, it was such issue which was expected to be decided. This was clear from a reading of paragraphs 3 and 5 of the said Order passed by this Court.

12 Significantly, on the backdrop of the Court's Order dated 1st December, 2023, the Petitioner was not put to a specific notice that, apart from the preliminary objections, the show cause notice itself would be taken up for consideration and would be decided. The hearing on the preliminary objections took place on 5th December, 2023, sans a faintest idea to the Petitioner that a final order on the show cause notice would be passed. Further, no opportunity to place on record the relevant documents was granted to the Petitioner, nor the same could be raised for want of the Petitioner's knowledge that the show cause notice itself is being taken up for decision much less on the ground, that the show cause notice needs to be decided by 31st December, 2023, failing which, it would be barred by limitation.

13 In the above circumstances, in our opinion, considering the well settled principles of law in regard to quasi judicial adjudication necessarily a fair and proper opportunity was required to be made available to the Petitioner and a clear notice, that final adjudication on the Show Cause Notice was to be held, should have been provided.

14 We may also add that, in the facts of the present case, the department certainly ought to have approached this Court to seek a modification of the order dated 1st December, 2023, to the effect that, apart from the preliminary objections, the adjudicating officer, in the facts of the case, intended to take the show cause notice forward and decide it finally. However, the adjudicating officer clearly overlooked the purport of the Court's order.

15 In view of the above discussions, we are of the opinion that the impugned Order-in-Original deserves to be quashed and set aside and the proceedings remanded to the adjudicating officer for deciding all the issues, including the preliminary objections, by a fresh order to be passed. This after an opportunity is granted to the Petitioner, to place on record such documents as the Petitioner intends to file before the adjudicating officer. This be done within a period of four weeks from today.

16 The adjudicating officer shall, thereafter, fix an appropriate date on which the Petitioner can be heard and make an endeavour to pass an appropriate order within a period of six weeks after hearing is concluded. All contentions of the parties in that regard are required to be kept open.

17 Ordered accordingly.

18 Petition stands disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)